

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 22, 2016

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 15HD-114

HAWAII

Grant of Term, Non-Exclusive Easement to the Keolahou Land Trust for Access and Utility Purposes, Piihonua, South Hilo, Hawaii, Tax Map Key: (3) 2-4-008:004 and 2-6-018:001.

APPLICANT:

Keolahou Land Trust

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Piihonua, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-4-008:004 and 2-6-018:001, as shown on the attached map labeled Exhibit A.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES ____ NO x

TMK/ ZONING/ ENCUMBRANCE/ EASEMENT AREA:

TAX MAP KEY	DISTRICT	ZONING		ENCUMBRANCE	EASEMENT AREA (Acres)
		LUC	CZO		
(3) 2-4-008:004	Piihonua, South Hilo	Cons	Cons	Proclamation dated April 11, 1917 to Division of Forestry & Wildlife for Upper Waiakea Forest Reserve.	.767
(3) 2-6-018:001	Piihonua, South Hilo	Ag	Ag	General Lease No. S-4476 to Freddy Nobriga Enterprises, Inc. for pasture.	15.3215
(3) 2-6-018:013	Piihonua, South Hilo	Ag	Ag	Governor's Executive Order No. 4361 to DOFAW for Addition to Hilo Forest Reserve	2.7635

CHARACTER OF USE:

For access and utility:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

ANNUAL RENT:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Not applicable. The Applicant as a trust is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 2) Pay for an appraisal to determine one-time payment;

- 3) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department;
- 4) Obtain the written concurrence of the lessee under General Lease No. S-4467 to that portion of the easement encumbering the lease premises;
- 5) Obtain at Applicant's own cost an easement from the Department of Hawaiian Home Lands over Tax Map Key: (3) 2-8-001:007 to complete the required connection to Saddle Road.

REMARKS:

In 1968, Donn W. Carlsmith obtained a 45-year lease from W.H. Shipman, Ltd, of two adjoining forty (40) acre parcels at Piihonua, covered by Land Patent (Grant) No. S-8970 and S-13,063, identified as Tax Map Key: (3) 2-6-018:003. The land patents are landlocked; therefore an easement was required from the State to provide legal accesses to Saddle Road, over a pasture lease and a portion of the Upper Waiakea Forest Reserve.

At its meeting of November 21, 1968, Item F-12, the Board of Land and Natural Resources (BLNR) approved the issuance of a 45-year, non-exclusive easement to Donn W. Carlsmith, for access and utility purposes.

On February 19, 2003, Mr. Donn W. Carlsmith passed away.

On November 17, 2011, staff sent a letter to the Estate of Donn W. Carlsmith, as there were no updated contact names or phone numbers in the file. Staff needed to inform grantee's representatives of the scheduled expiration of the subject easement and to inquire what the Grantee's intentions and future plans were for the easement. A Ms. Adrienne Yoshihara of Chun, Kerr, Dodd, Beaman & Wong, legal representatives of the Donn Carlsmith Trust, responded to staff's letter. Ms. Yoshihara informed staff that years ago Mr. Carlsmith assigned his interest in the property to himself as the trustee of his personal trust. Upon Mr. Carlsmith's death, the property was then assigned to the successor trustees/beneficiaries of the Donn W. Carlsmith Trust, Charman J. Akina, Bill Vanatta, and Tim Lui-Kwan.

Ms. Yoshihara explained that the Trust beneficiaries were going through some changes/modifications, so it could not be determined prior to the expiration of the previous easement which entity would be the resultant beneficiary.

Now that the issues regarding the various Trust beneficiaries have been resolved and the beneficiary entity has been established, a request for an easement can proceed. As a result, on July 16, 2015, Mr. Charman Akina visited the Hawaii District Land Office to submit an application for a grant of easement to re-establish legal accesses previously under Donn W. Carlsmith as Grant of Easement No. S-4484, for its private property identified as Tax Map Key: (3) 2-6-018:003.

The proposed new easement shall overlay the previous easement alignment described under Grant of Easement No. S-4484. The DLNR easement shall be for only those sections that traverse TMKs: (3) 2-4-008:004, (3) 2-6-018:001 & 013. The other section located immediately off the Saddle Road, under TMK: (3) 2-8-001:007 is to be issued by the Department of Hawaiian Home Lands.

Keolahou Land Trust has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

On November 6, 2015, various governmental agencies and interest groups were solicited for comments. All respondents had no objections to the request.

AGENCIES	COMMENTS
County of Hawaii:	
Planning Department	No objections
Public Works	No response
State of Hawaii:	
DLNR - DOFAW	No objections, see comments
DLNR - Na Ala Hele	No comments
DLNR - Historic Preservation	No response
DLNR - OCCL	No objections
Other Agencies/ Interest Groups:	
Office of Hawaiian Affairs	No response

The Division of Forestry & Wildlife had no objections to the request, but provided the following conditions: 1) That the Department of Hawaiian Home Lands grants Applicant an easement through their adjacent property, 2) That the road alignment of the access road as depicted on the maps be updated to reflect its actual location over DHHL and the Upper Waiakea Forest Reserve.

The lessee under General Lease No. S-4476, Freddy Nobriga Enterprises, Inc., has indicated it has no objection to the granting of the easement across a portion of its lease premises.

Staff is of the opinion that the easement qualifies for an exemption from preparation of an environmental assessment because the easement will consist of, 1) operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing, and 2) involve only minor alteration in the condition of land, water, and vegetation. Such use is presumed to result in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. The easement will be over the same alignment of the previous easement (S-4484) that was in use these past several decades.

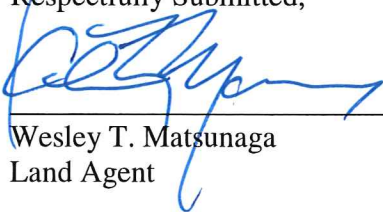
RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (3) 2-6-018:003, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-


compliance with such terms and conditions.

3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to the Keolahou Land Trust covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term access and utility easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (3) 2-6-018:003, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

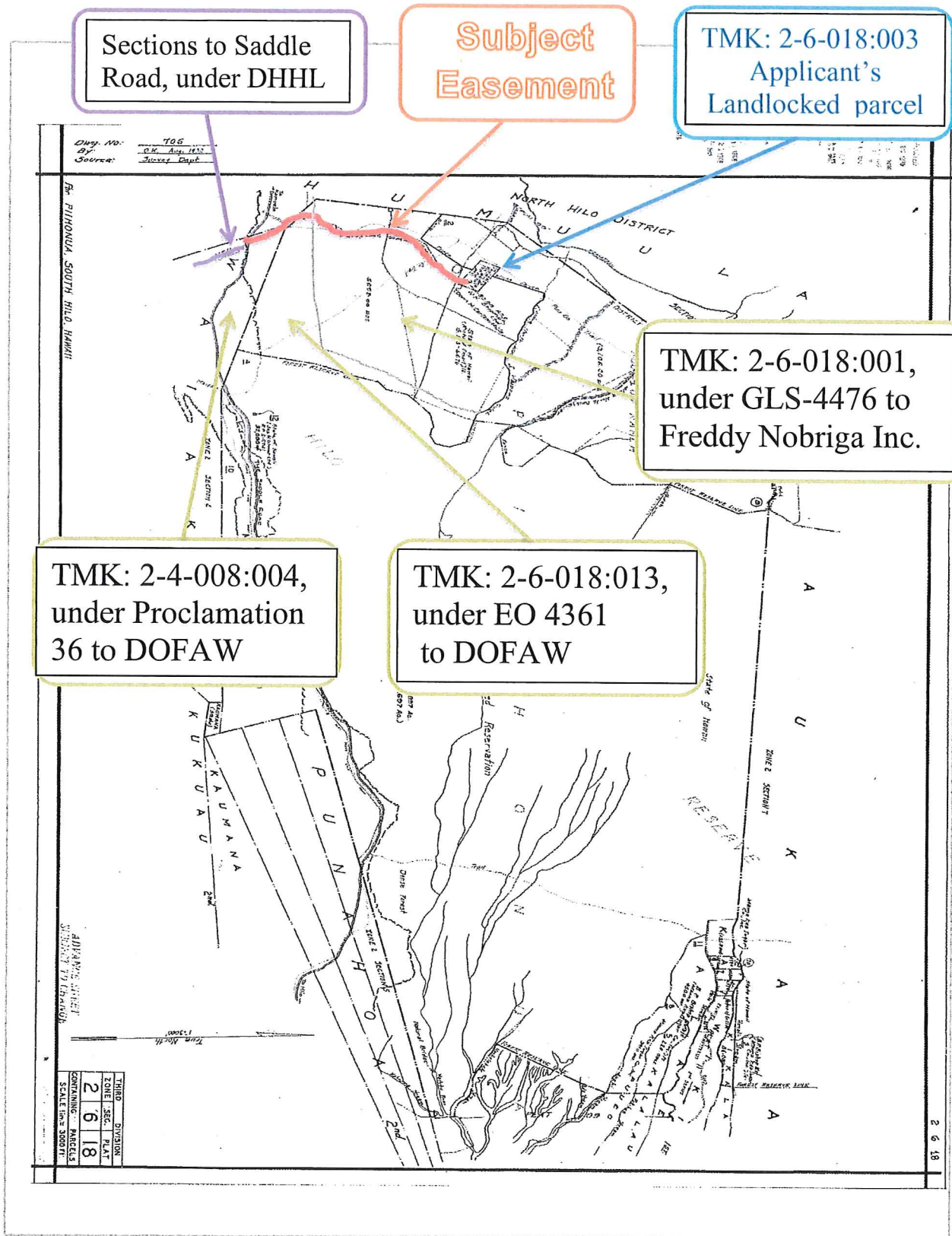


EXHIBIT A